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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NATIONAL PUBLIC RADIO, INC., and ERIC)	CASE NO. 4:18-cv-5772-DMR
WESTERVELT,)	
Plaintiffs,)	BURKE DECLARATION IN SUPPORT OF
v.)	PLAINTIFFS' MOTION FOR ORDER TO
UNITED STATES DEPARTMENT OF)	SHOW CAUSE RE: CONTEMPT OF COURT'S
VETERANS AFFAIRS,)	12/4/19 ORDER
Defendant.)	

I, Thomas R. Burke, declare as follows:

1. I am a partner at the law firm Davis Wright Tremaine, LLP and, along with my colleague Selina MacLaren, I represent Plaintiffs in the above-captioned matter. I am a member in good standing of the State Bar of California and the bar of this Court. I make this declaration in support of Plaintiffs' Motion for Order to Show Cause Re: Contempt Of Court's 12/4/19 Order filed concurrently herewith. The matters stated in this declaration are true of my own knowledge and, if necessary, I could and would competently testify to them.

2. On December 4, 2019, I attended the Further Case Management Conference held before

1 this Court. During that Conference, I discussed Defendant United States Department of Veterans
2 Affairs' ("Defendant") repeated delays in producing documents responsive to a Freedom of Information
3 Act request submitted by my clients over a year and a half ago. This Court issued an Order that day
4 requiring Defendant to produce 1,000 responsive pages on January 17, 2020, and 2,000 responsive pages
5 no later than the twentieth of each month thereafter, until production is complete.

6 3. On January 17, 2020, my office received a document production from Defendant via
7 electronic file transfer. The production consisted of a single PDF document that contained 6,498 pages,
8 with the Bates stamp numbers OAWP-000002-OAWP-006499.

9 4. Over 6,000 of these documents – from OAWP-0000059-OAWP-006091 – consist of a
10 single Excel spreadsheet attached to an email. Within that attachment, the majority of pages appear to
11 be blank. A true and correct copy of examples of blank documents within the attachment is attached
12 hereto as **Exhibit A**. In addition, the spreadsheet is formatted in a manner that makes the relatively few
13 documents with text indecipherable. A true and correct copy of examples of improperly-formatted,
14 indecipherable spreadsheet pages is attached hereto as **Exhibit B**.

15 5. Among the remaining 466 pages of the production, numerous pages again appear blank.
16 A true and correct copy of examples of those blank pages is attached hereto as **Exhibit C**. In addition,
17 several pages are thumbnail attachments, *i.e.*, logos and photographs embedded in signature lines. A
18 true and correct copy of examples of those thumbnail attachments is attached hereto as **Exhibit D**.

19 6. My colleague Selina MacLaren raised these issues with Defendant's counsel via email,
20 copying me, on January 21 and 28, 2020. Defendant's counsel denied that there was any error in the
21 production and maintained that the blank pages, indecipherable spreadsheet pages, and thumbnail
22 attachments are properly counted toward the page production requirement under this Court's December
23 4 Order. Ms. MacLaren asked whether Defendant was willing to supplement its February production to
24 make up for the deficient pages in the January production, but Defendant declined to agree to do so. Ms.
25 MacLaren also offered to meet and confer regarding these issues. Defendant's counsel did not respond
26 to the request to meet and confer, but noted that she is out of the office until February 10.

27 I declare under penalty of perjury under the laws of California and the United States that the
28 foregoing is true and correct. Executed in San Francisco, California.

Dated: February 5, 2019

/s/ Thomas R. Burke

Thomas R. Burke

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